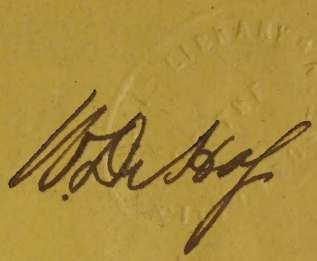
GERRIT SMITH'S

CONSTITUTIONAL ARGUMENT



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SUBSTANCE OF THE SPEECH

MADE BY

GERRIT SMITH,

IN THE CAPITOL

OF THE

STATE OF NEW YORK,

MARCH 11th AND 12th, 1850.

ALBANY:
JACOB T. HAZEN, PRINTER.

1850.

ARGUMENT.

MR. SMITH began with saying, that the following Petitions, numerously signed, had been presented to the Legislature, the present Session:

To the Senate and Assembly of the State of New York:

What a wonder, what a shame, what a crime, that, in the midst of the light and progress of the middle of the nineteenth century, such an abomination and outrage, as slavery, should be acknowledged to be a legal institution! Who, that reverences LAW, and would have it bless the world, can consent, that its sanction and support, its honor and holiness, be given to such a compound of robbery, and meanness, and murder, as is slavery?

Your petitioners pray, that your Honorable Bodies request the Representatives and instruct the Senators of this State in Congress to treat the legalization of slavery as an impossibility; and, moreover, to insist, that the Federal Constitution shall, like all other laws, be subjected to the strict rules of legal interpretation, to the end, that its anti-slavery character be, thereby, seen and established, and all imputations upon that character forever excluded.

The slaveholder will be strong, so long as he can plead law for his matchless crime. But take from him that plea, and he will be too weak to continue his grasp upon his victims. It is unreasonable to look for the peaceful termination of slavery, whilst the North, and especially whilst abolitionists of the North, sustain the claim of the South to its Constitutionality. But, let the North, and especially abolitionists of the North, resist, and expose the absurdity of, this claim—and slavery, denied thereafter all countenance and nourishment from the Constitution, will quickly perish.

Your petitioners will esteem it a great favor, if your Honorable Bodies will consent to hear one or more of them in behalf of the prayers of their Petition.

JANUARY 22, 1850.

To the Senate and Assembly of the State of New York:

The undersigned Petitioners, request your Honorable Bodies to give GERRIT SMITH a public hearing on the question, whether Slavery has any legal existence under the Federal Constitution?

FEBRUARY 14, 1850.

Mr. Smith said, that it was in consequence of these Petitions, that he had the privilege of speaking on this occasion. He confessed, that he felt embarrassed by the latter Petition. Its designation of himself had, as he apprehended, excited far higher expectations of his powers of advocacy than he should be able to satisfy.

Mr. Smith proceeded to say, that God made man in His own image—"a little lower than the angels"—and "crowned him with glory and honor." But slavery siezes upon this exalted being, and hurls him down from the high place, where his Maker put him, to a place among "four footed beasts and creeping things." The language of the slave-code is:—"The slave shall be taken, reputed, held, sold, as a chattel, to all intents and purposes and constructions whatever." Such is the fraud, such is the piracy, on human rights, of which slavery is guilty. It strips its victim of every right. It subjects him to every wrong. It reduces him to a brute. It classes him with brutes. Southern advertisements run:—"To be sold on such a day, and at such a place, so many horses, so many men, so many women, so many children, so many cows, so many wagons and carts." It was a strange freak of fancy and folly in the Roman ruler, who elevated his favorite horse to the dignity of the consulship, and exacted for that horse the homage of his degenerate countrymen. But what more strange is it to turn a horse into a man, as did the Roman ruler, than to turn a man into a horse, as does slavery!

Horrible and abominable, however, as is slavery, it is, nevertheless, claimed, that the Federal Constitution legalizes it, or, at least, admits its legality, and protects its existence. Our reply to this claim is, that slavery is incapable of legalization; and that no paper, however authoritative, can legalize it, or sanction its legality, or protect its existence. Law is for the *protection* of rights—not for the *destruction* of rights. But murder itself is not more decisively and sweepingly destructive of rights than is slavery. Nay, it is not so much so;—for murder is only one of the elements in the infernal compound of slavery. Law is simply the rule, or requirement of natural justice. To attempt, then, to identify it with naked, avowed and the very extremest injustice—what can be more absurd? This attempt, so well nigh universal, to confound law with the opposite of law; justice with injustice; right with wrong; is, of itself, sufficient to explain the prevailing want of reverence for true law, and the readiness with which men cast off its just requirements. Never, until it be universally admitted, that Law commands only what is right, and prohibits only what is wrong, will Law be universally respected and obeyed.

No man has seen more clearly, or expressed more glowingly and effectively, than Henry Brougham, the impossibility of legalizing slavery. "Tell me not of rights," says that mighty man. "Talk not of the property of the planter in his slaves. I deny the right. I acknowledge not the property. The principles, the feelings, of our common nature rise in rebellion against it. Be the appeal made to the understanding, or to the heart, the sentence is the same, that rejects it. In vain, you tell me of

laws, that sanction such a claim. There is a law above all the enactments of human codes. It is the law written by the finger of God upon the heart of man; and by that law, unchangeable and eternal, while men despise fraud, and loathe rapine, and abhor blood, they shall reject with indignation the wild and guilty fantasy, that man can hold property in man."

We wonder at the laws of our ancestors for putting witches to death. We pity their superstition and delusion. But our posterity will wonder much more at our laws for reducing men to slavery:—and they will execrate the avarice and wickedness, which prompted us to enact and execute such laws.

The just and high ground, that slavery is too iniquitous and foul and monstrous a thing to be, by any possibility, embodied and sheltered in the forms of law, should be taken by every one. But, for the sake of the argument, I come down from this high ground, and admit the possibility of legalizing slavery. The question, then, for me now to address myself to, is whether the Constitution be a law of slavery, or whether it forbids it. But, before entering upon the discussion of the question of the Constitutionality of slavery, I wish it to be distinctly understood, and fully admitted, that this is not a *historical* question—but a *legal* question: and, that to ascertain the meaning of the Constitution, we are to subject it, as we do, any other law, to the strict rules of legal interpretation. Obeying these rules, we are

1st. To look after the intention of the adopters of the Constitution. The intention of its framers we do not need to concern ourselves with any more than with the intention of the scrivener, whom we employed to write the deed of a parcel of land.

2d. To gather the intention of the adopters of the Constitution from the letter of the Constitution. "Language", said Tallyrand, "is the art of concealing the thoughts." Such may, possibily, have been the design of many of the talks and writings of some of the adopters and some of the framers of the Constitution. Men, who are engaged in writing a statute, may talk and write concerning it with the view of misleading people in regard to its meaning. It is true, that they may also, frame the statute to that very end. But, it is agreed on all hands, that we are compelled to take the statute, so far as it is intelligible, as the only evidence of their meaning and intention.

3d. Obeying these rules of interpretation, we are, where the letter of the Constitution is unintelligible, or ambiguous, to go out the Constitution into the collateral evidences of its meaning. This, however, only for the purpose of establishing an innocent meaning—a meaning in consonance with justice. There is no such liberty of range for the purpose of fastening upon the Constitution a construction at war with justice. From such a construction the Constitution must be spared, unless its letter absolutely and inevitably demands it. In this declaration I am fully sustained by the rule laid down by the Supreme Court of the United States in the case against Fisher and others (2 Cranch 390.) "Where rights are infringed, where fundamental principles are overthrown, where the general system of the laws is departed from, the legislative intention must be expressed with

irresistible clearness, to induce a court of justice to suppose a design to effect such objects." To illustrate this rule, and apply it to the present case. If it be claimed, under the Constitution, that one man may rob another of his horse, the right to do so must be *expressed* in the Constitution, and expressed too with *irresistible clearness*. So too, and much more emphatically, if it be claimed, under the Constitution, that one man may rob another of his liberty—of himself—of his all—the right must be, not inferred—not implied—but couched in express and irresistibly clear terms.

4th. Another of these rules requires, that if injustice and slavery, as well as justice and liberty, be in the Constitution, and that if either must be thrown out for inconsistency, it must be injustice and slavery. We must treat our Shylock of slavery, as the laws of Venice treated her Shylock. If our Shylock of slavery *must* have his pound of flesh, why then he must have it. But he shall take nothing more—no, not even one drop of blood. And not even his pound of flesh shall he be allowed to take, if, to take that, he must needs take aught—even one drop of blood—besides. Or to drop the figure:—if there are provisions for slavery in the Constitution, and they cannot operate but at the expense of subverting provisions in it for liberty, then such provisions for slavery must not be allowed to operate.

I will not, at this stage of my remarks, mention any other of the rules, by which the Constituiton is to be interpreted. In the progress of the discussion, I may have occasion to mention others.

All admit, that if there was no legal slavery in this country, at the time the Constitufion was adopted, the Constitution did not legalize any. All admit, that the Constitution did, at the most, but repeat the legalization of slavery; or, rather, did but approvingly recognize already existing slavery.

Was there any legal slavery in this country, at the time the Constitution was adopted? The Colonial Charters, surely, did not authorize it: for these charters all forbade, that the laws of the Colonies should be repugnant to the laws of England; and what the laws of England were, in respect to slavery, is manifest from the celebrated decision of the King's Bench in 1772. That was the desision, that, in England, there is no right of property in man. That was the decision wrung from Lord Mansfield. The like decision—the decision, that there cannot be in America any right of property in man—will, at no distant day, be wrung from the Courts of America. It was the indomitable perseverance of an humble layman, Granville Sharp, which compelled Lord Mansfield to withstand the tide of slavery in England. Would, that there were such a layman to compel the Courts of America to withstand the tide of slavery in America! I do not flatter myself, that the Courts, in any part of the world, will proceed, self-moved, to a very self-denying duty. The powers that be, whether in Church or State, are quite too conservative—quite too deeply interested in continuing the present condition of things—to volunteer in comprehensive and radical reforms.

Shameful were the expedients, which Lord Mansfield resorted to to stave off the decision in this case. Shrinking from the responsibility of pronouncing judgment, he would, from time to time, postpone the duty.—He was even so cowardly, as repeatedly to suggest, that the matter might be ended by the claimant's manumitting his slave. Mansfield was not the only great man, who, in that crisis, allowed himself to be swayed and overawed by a corrupt and wicked public sentiment. Blackstone was as guilty as he, in this respect. He had, previously, published the 1st Edition of his Commentaries. In that Edition he held the following truthful language:

"And this spirit of liberty is so deeply implanted in our Constitution, and rooted even in our very soil, that a slave or a negro, the moment he lands in England, falls under the protection of the laws, and with regard to all national rights, becomes *eo instanti* a freeman."

But, in the course of the trial, which so shook the nerves of poor Mansfield, the 2d Edition of Blackstone's Commentaries was published. In that Edition he changed the words: "and with regard to all national rights, becomes *eo instanti* a freeman" into the words: "and so far becomes a freeman—though the master's right to his service may possibly remain." Such was Blackstone's subservience to the pro-slavery sentiment, which then reigned in England. What wonder, if such men, as Mansfield and Blackstone, could consent to be the servants of the slave-power, that the great men of America also should consent to a similar self-degradation! Human nature is the same in America, as in England. But, thanks to our Maker, slavery can no more live always in America than it could in England. What is law—true and righteous law—in respect to slavery, will yet be declared by the Courts of America: and the declaration will be as fatal to slavery in America, as was the like declaration to slavery in England.

Lord Mansfield's decision was, of course, as applicable to the Colonies, as to England herself. If there could be no legal slavery in England, then there could be no legal slavery in the Colonies. Alas, that there was not a disposition in the Colonies to apply Mansfield's decision to the abolition of Colonial slavery! Had there been, the present generation in America and that, which preceded it, would have been saved from the curse of slavery. But, it is said, that laws had been enacted in the Colonies, by the terms of which persons could be held in slavery. I deny, that a fair and legal interpretation of these terms warrants this conclusion, or any approach to this conclusion. Read these laws—and you will find, that they assumed (as, indeed, is the case with all slave-laws,) that slavery had already an existence—a rightful, not to say legal, existence. Moreover, you will find, that

their description of its victims was quite too indefinite and vague to identify them; and that, hence these laws were void for uncertainty. What, however, if there were not these objections to these laws? The laws were nevertheless, unconstitutional and void, because at war with the Charters, which were the Constitutions of the Colonies. But, it is said, that slavery was tolerated in the Colonies after Mansfield's decision. So it was in England also. But toleration, neither in the Colonies, nor in England, should be taken for, or confounded with, legalization. I will read a part of an advertisement to show, that it was tolerated in England after Mansfield's decision. It is dated, "Liverpool, Oct., 15th, 1779."

"To be sold by auction at George Dunbar's office, on Thursday next, the 21st inst., at 1 o'clock, a black boy, about fourteen years of age, &c."

To show that it was tolerated in England before Mansfield's decision, I will read another advertisement.

"*Public Advertiser, Tuesday, 22d Nov.* 1769.

To be sold a black girl,' the property of J. B., eleven years of age, who is extremely handy, works at her needle tolerably, and speaks English perfectly well—is of an excellent temper and willing disposition. Enquire of Mr. Owen at the Angel Inn, behind St. Clements Church in the Strand."

These relics of England's pro-slavery literature very strikingly remind us of the like species of literature abounding in our Southern newspapers.

I pass on to the Declaration of Independence:—and I ask—what if there had been, down to the putting forth of that paper, legal and constitutional slavery in this land, did not that paper put an end to such slavery? That paper, more than any other paper, which ever was, or ever shall be, uttered the heart of the American people. That paper will, so long as this nation shall endure—and God grant that it may endure unbroken and undivided to the end of time!—(Mr. Smith was here interrupted by repeated applause.) I confess most unaffectedly, said Mr. Smith, that I welcome your applause of the prayer, which fell from my lips. But, I would have my hearers remember, that if the union of these States shall endure, it must be cemented by justice—by justice to the red man and the black man, as well as to the white man—by justice to all men. Expedients, from which justice and truth and mercy and God are shut out, are not the expedients for maintaining the union of these States. All such expedients will prove abortive. I have seen the recent propositions of some of our eminent statesmen for preserving the American Union. They are, perhaps, characterized by wisdom. But it is the wisdom of this world—not "the wisdom which cometh from above." They are, indeed, propositions for peace. But "the wisdom, which cometh from above, is *first* pure—*then* peaceable."

Now, there is no purity, no integrity, no religion, in these propositions. Moreover, the peace, which they propose, is an evanescent, because a spurious, peace. The peace, that is permanent, is the peace, that follows purity—is the peace, which is the offspring of purity. These propositions are full of murderous wrong to millions. Had they involved known and deliberate wrong to but one person—and that one person the least black baby in all the South—even then God could not have been in the propositions, and His blessing could not have been upon them. The peace, that could come from such propositions, must, at best, be but the peace of the wicked:—and, as God is true, "there is no peace to the wicked."

To return, said Mr. Smith, to what I had begun to say, when your patriotism and partiality interrupted me—the Declaration of Independence will, so long as this Nation endures, be, for some purposes, the highest Constitutional authority in the Nation. This paper settled it forever in the minds and hearts of our countrymen, that self-government is the right of every people. In every part of our land, men of all parties in religion and politics fall back upon the Declaration of Independence, as the highest Constitutional authority, that every people have the right of self-government. In respect to this transcendently important right, this paper lies at the basis of both the Federal and State Constitutions. It is the very soul of these Constitutions—the Constitution of Constitutions. But what does the Declaration itself set forth, as the ground of this right of every people to self-government? It sets forth, as that ground, that all men are created equal, and that life, liberty, and the pursuit of happiness are inalienable rights. And can we, then, go to this paper for authority for this right, and yet reject the very ground and reason for it, which the paper itself sets forth? Certainly not. If the Declaration of Independence be our authority for the self-government of a people, equally is it our authority for maintaining, that freedom is the birth-right of all.

Suppose, that, during the American Revolution, an American had been arraigned, before an American Court, for treason to the Crown—could he not have successfully plead the Declaration of Independence to prove his right to break his allegiance to the Crown? None doubt it. What, however, if he had been arrested, the next day, as a fugitive slave? Ought not his plea, that the same paper recognizes liberty to be the birth-right of all, to be just as successful, as was his plea, the day previous? Certainly. For the same paper, which he quoted, the day before, makes the right of a people to self-government grow out of the inalienable right of the individual to liberty. I hold, then, that if there ever were legal slavery in this country, it ceased forever, when the American people did, with well nigh one consent, adopt that immortal paper, which declares all men to be crea-

ted equal, and to have an inalienable right to life, liberty and the pursuit of happiness. Well may the Declaration be, as it has ever been, inexpressibly dear to every true American heart. That slaveholders—that they, who buy and sell men as hogs—should call it "a fanfaronade of nonsense," is not strange.

Ere proceeding to examine the Federal Constitution, I admit (for such admission is required by the rules of interpretation, which I have laid down) that, provided the letter of that instrument is clearly and certainly anti-slavery, or clearly and certainly pro-slavery, I am not to meddle with history. If, however, its letter be anti-slavery, though more or less doubtfully so, then I may go into history to fortify that letter, and to establish the anti-slavery character of the Constitution. Now, on the supposition (which is, however, only a supposition,) that the letter of the Constitution is but doubtfully anti-slavery, I am at liberty to refer to pieces of history, which go far to show, that the Constitution is necessarily anti-slavery. Its framers would not allow the word "servitude" in the Constitution, because it expresses the condition of slaves, and they would have the word "service" in its stead, because it expresses the obligations of free persons. Mr. Madison was not objected to, when he said, that he "thought it wrong to admit in the Constitution the idea, that there could be property in man." I do not say what were their *intentions*, as to keeping slavery out of, or getting it into, the Constitution—for what their *intentions* were, is, as I have already said, immaterial. But I do say, that there are various historical proofs, that the framers of the Constitution sought to have it wear a fair face for justice and liberty—so fair, that if after ages should learn the mortifying fact, that there had ever been slavery in this land, they should, nevertheless, not learn it from the pages of the Constitution. These historical proofs will be confirmed, if, on looking into the Constitution, we shall find, that its framers kept it clear of the words "slave" and "slavery" and of all words of like import.

Now, were it true, that the framers of the Constitution—even all of them—sought to smuggle slavery into it—to get it into it, without its being seen to be got into it; nevertheless, the restrictions, which they imposed upon themselves in framing it, made it impracticable to get slavery into that instrument. It was an impracticability, which they had themselves laid upon the very threshold of their work. To get slavery into such an instrument, as its framers had, from the first, determined, that the Constitution should—I do not say, be—but should appear to be—was as impossible, as to build up a fire in the sea. The embodied principles of justice and liberty would no more permit the one than the waters would permit the other. Talk of mixing slavery with liberty! As well talk of

mixing oil with water. "As well," in the words of the immortal poet, "may there be amity and life 'tween fire and snow." Talk of a web, the warp of which shall be of liberty and the woof of slavery!—such talk is nonsense. The Constitution is either for slavery, or for liberty. Is liberty provided for in it, and among its reigning principles? What, then, if there be lines in it, which, by themselves, would make for slavery? These lines, so far as they conflict with the Constitutional provisions for liberty, must be thrown out for inconsistency. The wrong must recede before the right—not the right before the wrong.

After making, for the sake of the argument, the admission, that, notwithstanding the Declaration of Independence or any thing else, there was legal slavery in this land down to the time of the adoption of the Constitution, I proceed to take up the Constitution.

And now, with what feelings, are we to enter upon the examination of the Constitution! It is claimed, that the white people of the North did, some sixty years ago, conspire with the white people of the South to hold the black people of this land, both of that and of all coming generations, in slavery: and it is further claimed, that the Federal Constitution is the Paper, which at once proves, and imparts validity to, this diabolical bargain: and that, therefore, American citizens are all bound to help carry this diabolical bargain into effect. I again inquire, with what feelings are we to enter upon the examination of the Constitution? On the supposition, that there was this conspiracy, are our feelings to be on the side of these two parties of conspirators? God forbid! we cannot be men—much less can we be christians—if we suffer our feelings to enlist on that side. Our sympathies must be with the third party in the case. Our sympathies must be promptly, wholly, constantly, with the poor broken-hearted, outraged victims of this conspiracy. We must take up the Constitution with the deepest desire to find it clear of all evidence of this conspiracy—or, failing to find it so, to find it full of power to put an end to this conspiracy. In a word, if there be this conspiracy, we must take up the Constitution to make from it all we can against the conspirators and all we can for those, who are conspired against. Do I ask here for aught, that is unreasonable—for aught, that is unlawful? Certainly not.

My first remark on the Constitution is, that all must admit, that the pro-slavery construction of it cannot abide the application of the rule of the Supreme Court of the United States, which I have quoted. If slavery be, at all, in the Constitution, nevertheless all must admit, that it is not there in *express*, much less in *irresistibly clear* terms. All must admit, that a person, however intelligent—if, nevertheless a stranger to the history of our country—might read and re-read that Constitution without once suspecting,

that there is slavery in it. I will, for the sake of the argument, take the rule in question as unsound and reject it. Nevertheless, I wish all to see how entirely fatal to every pro-slavery interpretation of the Constitution would be the application of this rule.

We learn two things from the preamble of the Constitution. 1st. Who made the Constitution; and 2d. What they made it for. "We the people of the United States" made it. Is this phrase of uncertain meaning? Then must the whole Constitution be void for uncertainty:—for then, the Constitution does not designate, and then the Government does not know, its own citizens. It is said, that it is for the State Governments to determine who shall be the citizens of the Federal Government. Then, it is in the power of the States to deprive the Federal Government of all citizens and, in short, to annihilate our national capacity. But, in point of fact, there is not the least uncertainty in the meaning of the phrase: "we the people of the United States". It necessarily means all and not a part—every kind and not one kind—of the people, who were, at that time, permanent inhabitants of the country. To say, that the phrase means but voters, is to say that, not only many of the white men, as well as all the black men were shut out from citizenship, but also all the white women and white children, as well as all the black women and black children. The voters, in such a case, represent the whole permanent population.

Nothing is plainer than that they, who claim, that a part of the people was excepted from "we the people," should show the exception in the Constitution. Moreover, as the exception would be a piece of flagrant injustice, the Supreme Court of the United States must (I will not say, to be right) must, to be consistent with itself, require the proof of it to be couched in express and irresistibly clear terms. I digress, for a moment, to ask how, in the absence of all proof of this exception, the State of New York can justify herself for excluding the colored man from the ballot box? Her first Constitution was not guilty of this proscription. Under that colored men had as free access as white men, to the ballot box. I admit, that the right to regulate voting belongs to each State, and not to the Federal Government. But this right is to be exercised reasonably; and, therefore, not with a reference to the color of the hair or the color of the skin. Did justice reign in this State, and were our Judiciary delivered from the spirit of caste, that part of our State Constitution, which shuts out men from the ballot-box because of the color of their skin, would be declared void for its repugnancy to the tenor, spirit and requirements of the Federal Constitution. To return from this digression—no argument—nothing worthy of the name of argument—can be offered against my definition of "we the people." This definition, being unanswerably true, it follows, that, if there were

slaves in this country, at the time the Constitution was adopted, that instrument made them all citizens, and, therefore, made them all free. The first line then of the Constitution—the first line even of its preamble—is the death of slavery. Perhaps, however, an ingenious lawyer would take the ground, that the slave part of the people consented to be, and were, therefore, slaves still. But, this ground is untenable for the reasons—1st. That, under a Constitution, which makes all free, none could be slaves, if they would—2d. That, as it is never to be supposed, unless, indeed, the language of the instrument make the supposition unavoidable, that a party to a contract consents to the open and flagrant wronging of itself in that contract, it is not to be supposed, that a party to the Constitution consented therein to their own enslavement and the enslavement of their posterity. (Mr. Smith here read a page or two from Lysander Spooner's book on the unconstitutionality of slavery—spoke in the highest terms of that book—commended it to all his hearers—and confessed his great indebtedness to it on the present occasion.)

I will say no more, said Mr. Smith, on that part of the Preamble, which informs us who made the Constitution. And on that part of it, which informs us for what they made it, I say, that one thing, for which it was made, was (to use the language of the Preamble, itself) "to secure the blessings of liberty:"—not to inflict, or uphold, the curse of slavery—but "to secure the blessings of liberty."

Thus far, then, the Constitution is anti-slavery. And, since we see the Goddess of Liberty standing in its porch, may we not hope to find, that the whole Constitution constitutes her glorious temple. Let us walk through its apartments to see whether they correspond with the porch. Or, to drop the figure, let us see whether the body of the Constitution corresponds with its Preamble.

Ere proceeding to examine the body of the Constitution, let me say, that the preamble of a law, though not identical with, and though not of equal authority with, its enacting clauses, is, nevertheless, a valuable guide in interpreting those clauses.

We have, now, come to the examination of the four provisions of the Constitution, which are relied on to prove its pro-slavery character. The first respects the apportionment of representatives. It is claimed, that the "other persons," referred to in this provision, are slaves. We will, for the sake of the argument, admit this, for a moment. And what have we then?—What, but the Constitution telling the slave States, that, so long as they remain slave States, they shall, to a certain extent, and to a great extent too, be shorn of political power—of power in the Federal Councils. Now, does such a diminution of their power help slavery? Certainly not.

But just the reverse. If, instead of allowing the slave to count but three-fifths of a person, the Constitution had allowed the person, who cannot read and write, to count but three-fifths of a person, would it have been chargeable with favoring, and putting a bounty upon, illiterateness? Certainly not. But just the reverse. This clause, therefore, on the supposition, that it refers to slaves, is to be numbered with the anti-slavery features and anti-slavery advantages of the Constitution.

But it is said, that the Constitution is wrong in allowing slaves to count at all in the apportionment. Who are they, that say so? Not they, surely, who are intelligent and true friends of human rights. Because a man is wronged shall he count less than a man? "A man's a man for a' that." God counts every man a unit. And let us beware how we count a man less than his Maker counts him.

It is also said, by way of complaining of the Constitution and proving its pro-slavery character, that the slaves should be allowed to vote. I admit, that they should be. But their not being allowed to is the fault, not of the Constitution, but the State Government. The State, and not the Federal Government, regulates voting. I admit, that the Constitution wrongs the slave, if it count him less than a unit. But, it does not help slavery thereby. The State Government, on the contrary, by not allowing the slave to vote, both wrongs the slave, and helps slavery.

But, it was only for the sake of the argument and for the moment, that I admitted, that this clause of the Constitution recognizes the existence of slavery. True, I might safely make the absolute admission, that it does —for it would not follow that it approvingly recognizes it. The bare recognition by the Federal Government of the existence of slavery would not impose any obligation on the Federal Government to uphold slavery—would not impose any obligation on it to forbear to overthrow slavery. But this clause cannot, without doing violence to its language and to the canon of interpretation, be made to refer to slavery. The correlative of "free" in this clause is not slaves.

The word "free" in the political papers of England and in such papers in this country, at that day, denoted those, who enjoy citizenship, or some franchise or especial privilege. Again, we are to interpret a word, if possible, in the light of the paper, and so as to harmonize it with the paper, in which it is used. But the Constitution does not refer to slaves. At least, it is to be proved, that it does. It does, however, refer to aliens, for it empowers Congress to naturalize them. Hence, we are to interpret "free" as the correlative of aliens.

Again, the word "free" must be taken as used, in this clause, not only in a political, but in a strictly legal sense. What, for instance, can be a

more purely legal matter than taxation? The right to tax, and to designate the subjects of taxation, is a purely legal right, and the word or words, used in creating or describing that right, must, therefore, be used with strict legal accuracy Says Gridley (Paige's Reports, 9 : 556,) "the Legislature should be deemed to use the term in a legal sense, when applying it to create or describe a legal right."

We proceed to the examination of the clause respecting the migration and importation of persons. And, now, if this clause do refer to slaves, what do we learn from it, but that the General Government got the States to consent, that, at the end of nineteen years, it might stop their prosecution of the slave trade? Was this pro-slavery on the part of that Government? The very reverse. If I get my drunken neighbor to consent, that, after one month, (and one *week* is more in the life of a man than nineteen years in the life of a nation,) I may break his bottles, and, if need be, *compel* him to be sober, am I, therefore, to be held up as favoring intemperance?

I deny, however, that this clause is to be interpreted, as referring to slaves. Surely, the unenslaved as well as the enslaved, can emigrate from one part of our country to another, and can be the subjects of importation also. Why, then, shall we not prefer the meaning, which is innocent, to that, which favors crime, and establishes injustice? We must prefer it. The legal rules of interpretation require it.

But, it was, perhaps, unnecessary to examine this clause. It can, now, have no power to uphold, or put down, slavery. It expired, by its own limitation, more than forty years ago.

The clause, respecting "domestic violence," is next in order. If there were not to have been slaves in the country, nevertheless would not this clause have been proper? Whether this clause shall, at any time, operate *against*, instead of *for*, the slaves, turns upon what are the views and character of the National Executive, at such time. Were the slaves violently to assert their right to freedom, and were the President a decided abolitionist and a true man, he would promptly take the side of the slaves. And he would do so—1st, because be would go for the Federal Constitution, and would treat the slave laws as void, because repugnant to the Constitution—2d, because he would regard, not the slaves, but those, who rose against them, as the insurgents—because he would regard not those, who were striving to deliver themselves from the cruellest bonds, but those, who were striving to refasten these bonds, as the guilty ones —as the ones guilty of "domestic violence."

The last of the clauses, claimed to be pro-slavery, is that, which respects fugitives from service. But, had there been no slaves in the country, and no prospect of there being any, this clause, also, would, still,

have been proper. Under this clause, minor children and lawfully indentured apprentices, who have fled from those, who are entitled to their services, can be reclaimed. Indeed, the clause must be taken as referring to such. It cannot refer to slaves. The fugitives in the clause are capable of owing. But slaves cannot owe, any more than horses can owe. It is true, that the slave is really a man. But, under the legal fiction, he is only a thing: and a legal fiction in this case, as well as a legal fiction in every other case, is to be interpreted strictly, and not extended beyond its proper bounds. There are some, however, who claim, that the slave can, in the eye of the Federal Constitution, owe service, because in its eye, he is a person, and not a thing. I will illustrate the absurdity of the supposition, that the slave can, either on the supposition, that he is a person, or on the supposition, that he is a chattel, owe any thing. A person claimed to be a fugitive slave, is brought before a magistrate. "On what ground do you claim his services?" asks the magistrate. "On the ground," answers the claimant, "that he is my property." "But," rejoins the magistrate, "the Constitution, even as held by the Supreme Court of the United States, admits no right of property in man." "Then," says the claimant, "I claim his services on the ground, that he is a person." "But," replies the magistrate, "it takes two persons to make a bargain. In the case of a man and a mouse, one can make the bargain. The man catches the mouse; and the mouse is his, without the consent of the mouse. But, far otherwise is it in the case of two persons. If one claim the services of the other, he must show the contract, by which that other consented to serve him."

Another reason, why the fugitives in this clause are not slaves, is, that they are held to service or labor under the laws. The laws, however, do but admit the master's right of property in his slave, as they do his like right in his ox. And whether it be the ox or the slave, that is lazy or unmanageable, the laws will not interfere to coerce service. There was not, at the time the Constitution was adopted, a slave law in all Christendom, which claimed service or labor from the slave.

"Under the laws thereof." Observe, that the language is not *under the enactments of the legislature thereof:* but "under the laws thereof." Hence, this clause cannot, possibly, be brought to the help of the pro-slavery interpretation of the Constitution. For the Constitution must first, and irrespectively of this clause, be shown to be pro-slavery, ere pro-slavery enactments can be called laws. Under our anti-slavery Constitution, pro-slavery enactments, being repugnant to it, are null and void —are no laws. Suppose, that the Virginia Legislature should enact, that the scores of families, who have recently emigrated from this State to

that, shall be slaves—and suppose, further, that these slaves shall succeed in escaping to their old State—would we not deny, that the enactment is Constitutional, and is, law? But, why are we not at liberty to take this course with every pro-slavery enactment?

Again—the pro-slavery interpretation of this clause is forbidden by that clause in the Constitution, which provides, that "Congress shall make no law prohibiting the free exercise of religion." For does not that pro-slavery interpretation interfere with the free exercise of religion? Most emphatically it does, if the law of 1793 fairly reflects that interpretation, and truly answers its demands. For that law threatens its heavy penalties upon all, who open their doors to the poor flying and affrighted slaves. And can they act the christian, and not see Jesus Christ Himself in these his humblest representatives; and not remember that as they do, or do not unto these "least" ones, they do, or do not, unto Him?

The notion, that "the free exercise of religion" consists in the liberty to hold what creed we will, and join what church we will, and observe what forms of worship we will, is exceedingly superficial and false. There is no "free exercise of religion," where the right to do all the deeds, which reason and humanity and religion call for, is not fully acknowledged.

And, now, must we believe, that our fathers intended to make this whole land the slaveholder's hunting ground?—and to have the public authorities everywhere, ay, and, also, as eminent statesmen have recently contended, private citizens every where, join in chasing down the innocent human prey? For one, I will not, cannot, believe it. For one I will not, cannot, believe, that our fathers were the most merciless of all men. Even, under the Jewish code, the escaping servant was not to be returned to his master—but was to be allowed to reside wherever he should choose. Even the Spaniards had mercy enough to admit into their treaty with the Moors an article, "by which runaway Moorish slaves from other parts of the kingdom were made free and incapable of being reclaimed by their masters, if they could reach Granada." But, under the pro-slavery interpretation of the Federal Constitution, there is not even a Granada left to the poor American slave. Under that interpretation, it is held, that go withersoever he will, in our own nation, or in any foreign nation, the two legged hounds and the four legged hounds are at liberty to bay upon his track. In 1826 our Government was guilty of the Heaven-defying crime of negotiating for the surrender of slaves, who had fled to Canada and Mexico.

And, now, why is it, that we must put this construction on the clause in question? Is it because its words require it? Its words forbid it. It

is, as we are told, because the framers of this clause intended to couch in it this horrid and infernal meaning. But what have we, when construing this clause, to do with the intentions of its framers? Nothing. Had they, however, the wicked intentions here ascribed to them? The proof is to the contrary.

The clause under consideration is called one of the compromises of the Constitution. But not one word was said on the subject of it in the Convention, which framed the Constitution, until twenty days before they finished their labors: and then, so far from their being any struggle about it, the clause was adopted in nearly its present form, without one word of debate, or one dissenting voice. The clause *was* a compromise, however, and we will see how it was such. It was introduced, August 28th, with the word "slave" in it. In that shape, however, it met with so little favor, that it was promptly withdrawn. It was introduced, the following day, with the word "slave" struck out; and then, every member of the Convention unhesitatingly acquiesced in it. This, and this only, is the compromise, which attaches to the clause in question. With what pro-slavery eyes must he look into this piece of history, who finds in it evidence of the pro-slavery character of the Constitution!

But, I have not yet done with this clause. A fortnight after it was adopted, and when the "Committee of style and arrangement" reported the Constitution, the word "servitude" was struck out of the Constitution and "service" unanimously inserted in its place, for the avowed reason, that "the former expresses the condition of slaves, and the latter the obligations of free persons." What a pack of hypocrites the members of the Convention must have been, if they still meant, that the word "service" in the clause under consideration, should be construed "to express the condition of slaves!"

I have now disposed of the four provisions of the Constitution, which are claimed to be pro-slavery. Is it said, that, notwithstanding they are not pro-slavery, the provision for the apportionment of representatives operates in favor of slavery, and that the provisions, respecting "domestic violence" and fugitives from service, are liable to be perverted to the advantage of slavery?—my answer, in that case, is—"then abolish slavery—and abolish it immediately."

I will, now, proceed to enumerate some, and only some of the provisions of the Constitution, which are incompatible with slavery, and which, therefore, demand its abolition. It will be seen, that, in a part of these provisions, there is power to abolish slavery.

1st. "Congress has power to provide for the common defence and general welfare of the United States." But, to how very limited an extent,

can this power be exercised amidst the influences and obstacles of slavery! It is not proper to say, that Congress has this power, if the exercise of it may be obstructed by State authority—if the power itself may be rendered entirely, or even partially, nugatory by that authority. It is absurd to say, that certain laws give a man power to drive his carriage through the streets, if, at the same time, other laws may be effectually pleaded for blocking its wheels. If the States may set up, and give any extent to, slavery, and sink themselves into the worst piracies, and so create, within their respective limits an atmosphere, in which the Federal Government cannot "live and move and have its being;" then the States have, virtually, the power of reducing the Federal Government, beyond the sphere of its exclusive jurisdiction, to no Government, at all.

This power to provide &c., Congress can never have faithfully exercised, so long as it leaves millions of foes in the bosom of the United States. Congress can enrol the slaves in the militia, and yield to their Constitutional right—"to keep and bear arms." This would, at once, abolish slavery, and convert these millions of foes into friends.

This power of Congress to provide &c. Patrick Henry, at that time the orator of America, held to be ample to effectuate the abolition of American slavery. In the Virginia Convention, which passed upon the Federal Constitution, Mr. Henry said: "May Congress not say, that every black man must fight? Did we not see a little of this, the last war? We were not so hard pushed, as to make emancipation general. But acts of Assembly passed, that every slave, who would go to the army, should be free. Another thing will contribute to bring this event about. Slavery is detested. We feel its fatal effects. We deplore it with all the pity of humanity. Let all these considerations, at some future period, press with full force on the minds of Congress. They will read that paper (the Constitution) and see if they have power of manumission. And have they not, Sir? Have they not power to provide for the general defence and welfare? May they not think, that they call for the abolition of slavery? May they not pronounce all slaves free? —and will they not be warranted by that power? There is no ambiguous implication or logical deduction. THE PAPER SPEAKS TO THE POINT. THEY HAVE THE POWER IN CLEAR AND UNEQUIVOCAL TERMS; AND WILL CLEARLY AND CERTAINLY EXERCISE IT."

2d. Congress has power to impose a capitation tax. To whom must the Government look, in such case, for payment! To none other, certainly, than the subject of the poll tax. The Goverment is under no obligation to pay attention to the superlatively nonsensical and wicked claim of the ownership of men. If it be, then States would have the power to

defeat the collection of a tax imposed upon its subjects—for it might assert, that some half dozen paupers within its bounds shall be called the owners of all its other subjects. We see, then, how utterly incompatible is slavery with this clause. It is so, 1st, because the slave is not liable to pay any thing—and 2nd, because slavery could defeat the collection of the tax.

3rd. "Congress shall have power to establish a uniform rule of naturalization." But this power is inconsistent with the right to continue slavery. Under this power, Congress can, any hour, naturalize, and confer citizenship upon, foreigners, or slaves, or whom it will. In other words, Congress can, under this power, give liberty, any hour, to the three millions of American slaves. If, at the time the Constitution was made, the slaveholders had desired (as, however they did not) to perpetuate slavery, they would, if they could, have qualified this absolute and unlimited power of naturalization.

4th. "The Congress shall have power to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." Have not Congress the right, in this clause, to encourage and reward genius, as well in the case of him, who is called a slave, as in the case of any other person? Certainly. Every person is entitled to a copy right of his book, and to a patent for his meritorious invention. But how incompatible is this with slavery, the victim of which has no rights, and the productions of whose mind, equally with the productions of his hands, belong to his master!

5th. "Congress shall have power to declare war, grant letters of marque and reprisal—to raise and support armies—to provide and maintain a navy." Must Congress get the consent of a State, as to whom it may enlist in its armies or navies, and as to whom it may grant letters of marque and reprisal? Then, it follows, that Congress has no absolute power for carrying on war. Manifestly, Congress can contract with whom it pleases—white or black, bond or free—to fight its battles; and can secure to each his wages, his pension, his prize-money. But how inconsistent is all this with the claim of the slaveholder to the earnings, the will, the all, of the soldier, or sailor, whom he might claim to be his slave?

6th. "The United States shall guarantee to every State in this Union a republican form of government." We often hear it said, that the General Government should not concern itself with the internal policy and arrangements of the States. But to neglect to do so might involve its own ruin, and also the cruellest wrong and deepest distress to the masses in one or more of the States. Suppose, that in one State, suffrage were universal; in another conditioned on the ownership of ten thousand dollars in land

or money; in another on the ownership of a dozen slaves; and in another on literary and scientific attainments; and in the others on still rarer attainments and possessions, and all differing from each other. What a lack of similarity and sympathy there would be, in that case, between the Congressional representations of the different States! What discord in our National Councils! What ruin to our National interests! In the next place, how cruel and guilty would be the infidelity of the General Government to its obligations, were it to leave the masses in a State, who are oppressed by aristocratic and despotic forms of Government, to cry out, in vain, for a republican form of Government?

But is it not true, that our Nation is already brought into great peril by the slavocratic element in our Federal Councils?—and is it not also true, that, in some of the States, the white, as well as the black masses, are already crushed by the slavocratic form of government? These masses have a fair, Constitutional, and most urgent claim on the nation for *republican* State governments.

7th. "No State shall pass any bill of attainder." But what is so causeless and cruel a bill of attainder, as the attainting of a woman and all her posterity, to the end of time, for no other offence than having African blood in her veins—be it even but one drop, and that accompanied by a purely white skin?

8th. "The privilege of the writ of Habeas Corpus shall not be suspended, unless, when, in cases of rebellion or invasion, the public safety may require it." This writ Blackstone well calls "the most celebrated writ of England and the chief bulwark of the Constitution." One of his editors, Mr. Christian, says that "it is this writ, which makes slavery impossible in England." This writ is wholly incompatible with the right of property in man. Such right must render the writ completely impotent. If property can be plead in the prisoner (and possession is proof of ownership) the writ is defeated.

Slavery can be legalized, only by suspending, the writ of Habeas Corpus, in the case of the slaves. But the Constitution provides for no such suspension: and, hence, there is no legal slavery in the land. A suspension of the privilege of the writ of Habeas Corpus, in the case of certain persons, would be a substantially proper definition of the law of slavery.

I would add under this head, that Federal Judges should be multiplied, until, if need be, there be one in every slaveholding county, or even town—Judges, who would honestly and effectually use the writ of Habeas Corpus in behalf of the deliverance of every slave.

9th. Slavery is incompatible with the provision of the Constitution in

favor of the free exercise of religion. The free exercise of religion involves the right to impart and receive religious and all useful knowledge. But, to forbid (under the severest penalties upon both teacher and learner) either the free or the enslaved colored person to read the Bible, or even spell the name of Jesus Christ, is admitted to be essential to the maintenance of slavery.

10th. "No person shall be deprived of life, liberty, or property, without due process of law."

11th. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated." These two provisions, which are, on their face, so utterly incompatible with slavery, are said to be negations of Federal power only—not of the power of the States. My first answer is, that no such distinction appears in the language of the provisions. The language makes the provisions apply, as well to the control of the action of State Governments, as of the Federal Government. My second answer is, that there is abundant historical evidence, that the language was designed, as well to restrict State Governments, as the Federal Government.*

I have, now, gone through with my examination of the Constitution. It is not a pro-slavery instrument—is it? It is an anti-slavery instrument—is it not? It demands the abolition of every part and parcel of American slavery—does it not? Why was not this demand obeyed, immediately after the adoption of the Constitution? I admit, that there was, at that time, no desire, no purpose, to array the powers of that instrument against slavery. The reason of this was, that slavery was regarded, on all hands, as a doomed and rapidly expiring evil, and that it was thought better to let it live out on sufferance its brief existence—an existence, which could not extend beyond that generation—than to disturb the infant and unconsolidated Nation by putting an immediate stop to it. Many facts might be cited to show, that the end of slavery was then thought to be drawing near. Among these, is the fact, that the price of a slave, at that period, was not a fourth, or a third, as great as now. Another is, that such men, as Washington and Jefferson, were laboring for the abolition of slavery. Another is, that, whilst the Convention, sitting in Philadelphia, were framing our anti-slavery Constitution, the Congress, sitting in New York, were, with but one dissenting voice (,and that of a Northern member,) passing the celebrated Ordinance, which excludes slavery forever from that vast Territory, comprising the States of Ohio, Indiana, Illinois, Michigan and Wisconsin.

I have given the reason, why the Constitution was not used, as soon as it was adopted, to put slavery to death. This reason is, in brief, that it

* See Appendix.

was deemed needless to kill what was dying so certainly and so rapidly. But, what is the reason, why it was not put to death, some ten or twenty years afterwards, when it was found to have revived, and to be strengthening and extending itself? Alas, slavery was becoming immensely lucrative!—and the avarice of the Nation—that passion so mighty to paralyze the moral sense and engulf the virtuous affections—was, now, interested in slavery, and enlisted for its protection.

Eli Whitney's cotton gin is the secret of the revival and power of American slavery. It was invented in 1793. The total amount of cotton exported from this country, previous to that year, was but 742,860 pounds. The export of 1795 was six and a quarter millions—of 1800 seventeen millions and four-fifths—of 1835 three hundred and eighty-six millions. The growth of slavery, has kept pace with the growth of cotton. The half million of slaves, with which we began our national existence, are multiplied into three millions.

Since the invention of the gin, numerous causes for upholding and extending slavery, have come into being. One has begotten another. They have multiplied themselves indefinitely. The necessity of holding this or that National political party together has been one cause for continuing and favoring slavery: the necessity of holding this or that National religious party together has been another. Every blow at slavery is a blow at the harmony and at the very existence of these parties. How corrupt, then, must be American politics—how corrupt, then, must be American religion —all can judge.

One of the most efficient causes, at the present day, for the reconcilement of the public mind to slavery, is the belief, that some of the framers and adopters of the Constitution did really mean to get slavery into it. But, what if they did? The only pertinent question, at this point, is: "Did they get it in?" If, in drawing up a paper to express a bargain with my neighbor and myself, I try to embody a fraudulent claim; but couch it in terms so obscure and enigmatical, that the Court, before whom I seek to enforce it, cannot see it; must the Court, nevertheless, allow my claim? Must the Court take the will for the deed, and reward my endeavour to cheat my neighbour, albeit the endeavour was unsuccessful?

Another, and still more efficient reason for the public acquiescence in slavery, is that its victims belong to a weak, and helpless, and despised race—that they may, therefore, be outraged with impunity—and that the legality of their enslavement need not, therefore, be strictly inquired into.

Alas, alas, my colored countrymen, was there ever so ill-starred and wronged a people as you are? Whilst, in the case of other persons, it is held, that nothing short of a positive, definite, clear, certain law will suf-

fice to fasten upon its victims the chains of slavery; in your case it is held, that the loosest inferences and vaguest implications are sufficient to secure this horrid result. No respectable lawyer would say, that, by the force of such inferences and implications, a man should be deprived of his horse, or even of his dog. Nevertheless, almost all lawyers and almost all other men, not excepting the most prominent abolitionists, maintain, that, by the force of such inferences and implications, men may be deprived of more than their life—even of their liberty—for liberty is more precious than life. The grave of liberty is more to be dreaded than the grave of the body. I said, my colored brethren, that even the most prominent abolitionists are against you at this vital point. That they are is among your heaviest calamities.

How would Mr. Clay, or Mr. Webster, or Mr. Calhoun meet the proposition, that the men of this country, who belong to the proud and strong Anglo-Saxon race, can, by the force of such inferences and implications, as we have alluded to—can, by the force of a Constitution, which, at the most, does not make one express allusion to slavery—be held in slavery? They would scout it, with the utmost contempt. Why, then, do these gentlemen hold, that such inferences and implications are sufficient to bind in slavery the three millions of our colored countrymen? Ah, it is because these three millions are weak and powerless; and that we may, therefore, wrong them, as we will.

I insist, that the Constitution does not allow the three millions of our colored countrymen to be held in slavery; and I insist on this, because I insist, that the law to hold Africans in slavery shall be as positive and definite and stringent, as the law to hold Anglo-Saxons in slavery.

How long, oh how long, shall the North, and even the abolitionists of the North, continue to sustain the claim of the South to the Constitutionality of slavery? Just so long as they do, the slaveholder will be strong, and his victims will be powerless in his grasp. Just so long as they do, the poor black men of the South, ay, and also the poor white men of the South, will crouch down and tremble around him. But strip him of the power and influence, which he derives from the sheer falsehood, that the Constitution is pro-slavery, and the charm is gone—and he has become as weak as other men—and the public sentiment, which had hitherto braced him up, now falls away from him—and, now, he is derided for his impotence—and, now, he is hated with impunity—and, now, his slaves rise up around him, and successfully assert their claim to freedom.

But, I must hasten to the end of my remarks.

Gentlemen of the Legislature! you have honored me greatly, in per-

mitting me, a private, uninfluential individual, to appear before you—in permitting me, who am ignorant of all law, to address to you an argument on the gravest question of Constitutional law. May I, now, ask, that you will honor yourselves?—and honor yourselves, too, infinitely more than you have honored me? Do yourselves the immeasurable, the immortal honor to grant the prayers of those petitioners, whom I represent on this occasion.

Do this, gentlemen, and you will be among the bravest and best benefactors of mankind. Do this, gentlemen, and you will have done an amount of good, that few men have it in their power to do. Strike this heavy blow for freedom—and, in less than five years, it will be repeated by the Legislature of every Free State in the Union. Strike this heavy blow for freedom—and, ere ten years pass away, the doors of the great Southern prison-house will fly open, and the millions of imprisoned ones will taste the sweets of liberty.

Gentlemen, will you do it? You will not, if you stoop to inquire how such a proceeding of justice and mercy will be viewed by Southern politicians; or how it will affect this or that political party. You will not do it, if you pause to parley with the tempters, which, in such a case, are wont to cluster around even the good man's soul, and ply its integrity with their seductions. But, you will do it, gentlemen, if you "remember them, that are in bonds as bound with them"—if you put your souls in their souls stead, and feel, as if the chains upon their limbs are also upon your own, and as if the iron, which has entered their souls, has also entered yours. In a word, you will do it, if you resign yourselves to the counsels of reason and humanity and religion. You will do it, if you forget not, that every man is to render, at the last day, an account of all the deeds done in the body.

APPENDIX.

It is argued, that these Constitutional specific denials of the deprivation and violation of rights are limitations upon the power of the Federal Government only. It is so argued, on the ground, that, when the Constitution does not point out, whether the limitations are on Federal or State power, it is to be inferred, that they are on Federal power, and on that only.

Whence, however, the justification of such inference? From the fact, it is answered, that the Federal power is the subject matter of the Constitution—is that of which it treats—is that, which it constitutes. But, this is not a just view of the case. The paper, called the Federal Constitution, is as distinctly a paper for fixing limits, within which the States shall keep themselves, as it is for constituting the Federal Government;—and the one purpose is no less important, or necessary, than the other. What, however, if the inference referred to were warrantable? So far, certainly, as the original Constitution is concerned, it matters not—for nothing of the uncertainty in question is to be found in it. The original Constitution shows too plainly to make a more frequent recurrence of the word "Congress" necessary that the 8th and 9th section of its 1st article were devoted to the enumeration of the powers and disabilities of Congress. It also shows plainly, that the 10th section of the same article was devoted to the enumeration of the disabilities of the States. All this is too plain ever to have been doubted. We have lying before us an old copy of the Constitution, printed in Virginia, in which "Powers of Congress" is at the head of the 8th section, and "Restrictions upon Congress" is at the head of the 9th section, and "Restrictions upon Respective States" is at the head of the 10th section.

Why, however, it is asked, was it necessary to have a repetition of the word "State" in the 10th section, any more than a repetition of the word "Congress" in the 9th section? The ready answer is, that it would not have been necessary, had the negation of State powers been preceded by the enumeration of State powers, as is the negation of Federal powers by the enumeration of Federal powers.

So far as respects the sections we have referred to, the Constitution is, surely, not to be charged with making room for the looseness of inference. It had just devoted a section to limitations on the Federal power. It proceeds to devote the next section to limitations, and some of them identical with limitations in the other section. What, but upon State powers, could these limitations be upon? And yet, to avoid the necessity of inference, the word "State" is repeated several times, in connection with these limitations. We add, where, in the original Constitution, either before or after the three sections spoken of, is it left to inference, whether the powers granted, or denied, be Federal or State powers? No where.

The prohibition in the 9th section: "No ex post facto law, or bill of

attainder shall be passed," is that, which is relied on to prove, that any prohibition in the Constitution, which like this, does not, in terms, apply to any Government, is to be construed as applying to the Federal Government, and that only. But we have shown, that the place and connection in the Constitution of this recited prohibition superseded the necessity of applying it, in terms, to the Federal Government. Were there a reasonable doubt, (which there is not,) that the place and conneetion of this prohibition determine the application, we should be at liberty to look away from the Constitution to collateral testimonies. And how quick would the doubt be dispelled! For, not only did the draft of the Constitution, which was under discussion, when near the close of the Convention, this prohibition was inserted—not only we say, did this draft include in one chapter, both the powers and disabilities of Congress—and not only did the chapter, by beginning with the words: "The Legislature of the United States," determine, that every part of it is applicable to that Legislature, and *that* only—but the prohlbition was moved and inserted in the following words: "The Legislature (Congress) shall pass no bill of attainder, nor any ex post facto law." "The Committee of style and arrangement" made their Report a few days afterwards, in which they slightly varied the phraseology of this and other parts of the Constitution.

We now pass on to the amendments of the Constitution: for it is in them, that we find those specific denials of the deprivation and violation of rights, which forbid slavery.

Twelve articles of amendment were proposed by the first Congress. The first three, and the last two, do, in terms, refer to the Federal Government, and that only. To what Government or Governments, the other seven refer is a matter of inference. Whilst, however, it would be a total violation of the laws of inference to say, that they refer to the Federal Government only, it would be in full accordance with these laws to say, that, because the other five expressly refer to the Federal Governments, these seven refer to the State Governments, or to both the Federal and State Governments.

Many, there doubtless are, who, because the first one of the adopted amendments expresses its reference to the Federal Government, infer, that there is the like reference, in the case of all the other amendments. But it must be borne in mind, that the first two of the proposed amendments were rejected—that for this reason, the third came to be numbered the first—and that all three of them refer expressly to the Federal Government. To say that the 11th and 12th of the adopted amendments were proposed by Congress, after the other ten were adopted, may be to some persons a neeessary explanation.

We have given one reason, why a part of the amendments of the Constitution refer to the State Governments exclusively, or to both the Federal and State Governments. Another reason is, that they are, in their nature and meaning, as applicable to a State Government, as to the Federal Government. And another is, that, if there be only a reasonable doubt, whether they refer to the Federal Government exclusively, they should be construed, as referring to the State Governments also: for human liberty is entitled to the benefit of every reasonable doubt; and this is a case, in which human liberty is most vitally and extensively concerned.

We are not at liberty to go back, nor aside, of the Constitution to inquire, whether the amendments in question, are, or are not, limitations on State power. There they are, as suitably, in their terms, nature, and

meaning, limitations on State, as on Federal power. This being the fact, we are to believe, that the people, when adopting them by their Legislatures, interpreted them as having the two-fold application, which we claim for them. This being the fact, the people now, whether their fathers did, or did not, may insist, and must insist, on this two-fold application. In the name, then, of reason and religion, of humanity and God, we protest against the supplanting of our just interpretation with one, which shall minister to the diabolical purpose of holding millions of our countrymen and their posterity in the cruellest and foulest bondage.

Were, however, the Constitution obscure on the point under consideration, we should, nevertheless, not be without collateral testimony, in behalf of our interpretation. It is an interesting and apposite historical fact, that almost all the amendments of the Constitution, and all of them, in which, on the present occasion, we are concerned, were taken from the Bill of Rights, which the Virginia Convention proposed to have incorporated with the Federal Constitution. But this Bill of Rights speaks neither of Congress nor of the Federal Government: and it evidently contemplates absolute security:—security, as well from the invasion of State, as of Federal power.

Were we, in quest of further collateral testimony, to go to the proceedings of the Congress, which submitted the amendments, we should find, that Mr. Madison was the first person to move in the matter; that he proposed two series of amendments, one of them affecting Federal, and the other State powers; and that it was a part of his proposition to have them interwoven in the original Constitution—for instance, the negations of Federal power to be included in the 9th section of the 1st article, and the negations of State power to be included in the 10th section of that article. We should also find, that several of the amendments, which he proposed to have included in the 10th section are, in substance, and well nigh to the very letter, identical with amendments, which are now a part of the Constitution. We should also find Mr. Madison justifying himself in the following words for his proposition to impose limitations on State power—"I think there is more danger of these powers being abused by the State Governments, than by the Government of the United States"—"It must be admitted, on all hands, that the State Governments are as liable to attack these invaluable privileges, as the General Government is, and therefore ought to be as cautiously guarded against"—"I should, therefore, wish to extend this interdiction, and add, that no State shall violate, &c."—"If there was any reason to restrain the Government of the United States from infringing upon these essential rights, it was equally necessary, that they should be secured against the State Governments. He thought, that if they provided against the one, it was as necessary to provide against the other, and was satisfied, that it would be equally grateful to the people."

By looking into the Congressional proceedings referred to, we should also find, that the House of Representatives, instead of following Mr. Madison's plan of distributing the amendments through the original Constitution, and so applying one to the Federal and another to the State Governments, made them a supplement to the original Constitution, and left a part of them, couched in such terms, as render them equally applicable to the Federal and State Governments. It should, also, be borne in mind, that this plan of Mr. Madison, which was embodied in the Report of a Committee, was kept, a long time, before the attention of the House. We should, moreover, find, that whatever may have been said by

this or that speaker, respecting the application of this or that amendment, no vote was taken, declaring that all, or any, of the amendments apply to the Federal Government. And whilst, on the other hand, there was no vote taken, declaring the application of any of the amendments to the State Government, there *was* a vote taken, which serves to show, that the House did not mean to have all the amendments apply to the Federal Government exclusively. The vote was on the following proposed amendment: "No person shall be subject, in case of impeachment, to more than one trial, or one punishment for the same offence, nor shall be compelled to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, &c." Mr. Partridge, of Massachusetts, moved to insert after "same offence" the words: "by any law of the United States." His motion was lost. The House would restrain a State, as well as the Nation, from enacting such an unrighteous and oppressive law.

What, if any, were the proceedings of the Senate, respecting the amendments of the Constitution, except to concur with the House in recommending them, we do not know—for its five first sessions were with closed doors.

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